

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

**IN RE: AQUEOUS FILM-FORMING
FOAMS PRODUCTS LIABILITY
LITIGATION**

MDL No. 2:18-mn-2873-RMG

**This Document Relates to
ALL CASES**

**UNITED STATES' GLOBAL MOTION TO DISMISS FOR LACK OF JURISDICTION
BASED ON CERCLA SECTION 113(h)**

Pursuant to Federal Rule of Civil Procedure 12(b)(1) and Case Management Order 25, Defendant the United States of America hereby moves to dismiss the claims listed in Table 1 below for lack of subject matter jurisdiction (the “Remedial Claims”). This Court lacks jurisdiction over the Remedial Claims under section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). 42 U.S.C. § 9613(h). That provision strips federal courts of jurisdiction over any claim that challenges an agency’s response actions under CERCLA, with certain limited exceptions not at issue here. At each of the facilities targeted by the Remedial Claims, the U.S. Department of Defense is engaged in CERCLA response actions addressing releases of perfluoroalkyl substances. Because the Remedial Claims are seeking injunctive relief to alter, supplement, speed up, or otherwise dictate those response actions, they must be dismissed.

Table 1 – List of Claims Subject to Dismissal under CERCLA Section 113(h)

Case	Claims Subject to Dismissal
<i>City of Newburgh v. United States, et al.</i> , No. 2:18-cv-03358-RMG	1, 2
<i>County of Suffolk v. United States</i> , No. 2:19-cv-01181-RMG	1, 2, 8, 10, 11, 12
<i>Elsinore Valley Municipal Water District v. 3M Co.</i> , No. 2:21-cv-03699-RMG	3, 4, 5
<i>Lakewood Water District v. United States</i> , No. 2:20-cv-02899-RMG	10
<i>New Jersey Department of Environmental Protection v. United States</i> , No. 2:21-cv-00146-RMG	1, 2
<i>New Mexico v. United States</i> , No. 2:20-cv-02115-RMG	1, 2
<i>Town of New Windsor v. United States</i> , No. 2:21-cv-01496-RMG	2, 3, 4, 5

In support of this Motion, the United States submits and relies upon the accompanying Memorandum of Points and Authorities and all exhibits thereto.

Respectfully submitted,

Dated: February 26, 2024

TODD KIM
Assistant Attorney General

/s/ Andrew D. Knudsen
ANDREW D. KNUDSEN
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
(202) 353-7466
Andrew.Knudsen@usdoj.gov

Counsel for the United States

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2024, a copy of the foregoing was filed via the Court's ECF system and served on counsel of record through the ECF system.

Dated: February 26, 2024

/s/ Andrew D. Knudsen
ANDREW D. KNUDSEN